

Office of the Secretary, Interior

§ 4.1307

Arlington, VA 22203. Phone: 703-235-3800.

§ 4.1302 Time for filing.

(a) A petition for review of a notice of proposed individual civil penalty assessment must be filed within 30 days of its service on the individual.

(b) No extension of time will be granted for filing a petition for review of a notice of proposed individual civil penalty assessment. Failure to file a petition for review within the time period provided in paragraph (a) shall be deemed an admission of liability by the individual, whereupon the notice of proposed assessment shall become a final order of the Secretary and any tardy petition shall be dismissed.

§ 4.1303 Contents and service of petition.

(a) An individual filing a petition for review of a notice of proposed individual civil penalty assessment shall provide—

(1) A concise statement of the facts entitling the individual to relief;

(2) A copy of the notice of proposed assessment;

(3) A copy of the notice(s) of violation, order(s) or final decision(s) the corporate permittee is charged with failing or refusing to comply with that have been served on the individual by OSM; and

(4) A statement whether the individual requests or waives the opportunity for an evidentiary hearing.

(b) Copies of the petition shall be served in accordance with § 4.1109 (a) and (b) of this part.

[53 FR 8754, Mar. 17, 1988; 53 FR 10036, Mar. 28, 1988]

§ 4.1304 Answer, motion, or statement of OSM.

Within 30 days from receipt of a copy of a petition, OSM shall file with the Hearings Division an answer or motion, or a statement that it will not file an answer or motion, in response to the petition.

§ 4.1305 Amendment of petition.

(a) An individual filing a petition may amend it once as a matter of right before receipt by the individual of an answer, motion, or statement of OSM

made in accordance with § 4.1304 of this part. Thereafter, a motion for leave to amend the petition shall be filed with the administrative law judge.

(b) OSM shall have 30 days from receipt of a petition amended as a matter of right to file an answer, motion, or statement in accordance with § 4.1304 of this part. If the administrative law judge grants a motion to amend a petition, the time for OSM to file an answer, motion, or statement shall be set forth in the order granting the motion to amend.

§ 4.1306 Notice of hearing.

The administrative law judge shall give notice of the time and place of the hearing to all interested parties. The hearing shall be of record and governed by 5 U.S.C. 554.

§ 4.1307 Elements; burdens of proof.

(a) OSM shall have the burden of going forward with evidence to establish a prima facie case that:

(1) A corporate permittee either violated a condition of a permit or failed or refused to comply with an order issued under section 521 of the Act or an order incorporated in a final decision by the Secretary under the Act (except an order incorporated in a decision issued under sections 518(b) or 703 of the Act or implementing regulations), unless the fact of violation or failure or refusal to comply with an order has been upheld in a final decision in a proceeding under § 4.1150 through 4.1158, § 4.1160 through 4.1171, or § 4.1180 through 4.1187, and § 4.1270 or § 4.1271 of this part, and the individual is one against whom the doctrine of collateral estoppel may be applied to preclude relitigation of fact issues;

(2) The individual, at the time of the violation, failure or refusal, was a director, officer, or agent of the corporation; and

(3) The individual willfully and knowingly authorized, ordered, or carried out the corporate permittee's violation or failure or refusal to comply.

(b) The individual shall have the ultimate burden of persuasion by a preponderance of the evidence as to the elements set forth in paragraph (a)(1) of this section and as to whether he was a